

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA

MYA DEIONSHAI CORBETT,)	
)	CASE NO. 22-10293
Plaintiff/Debtor,)	CHAPTER 13
)	ADV. PROC. NO. 22-2017
v.)	
)	
TOWRIFFIC TOWING &)	DEFENDANT OAK TREE
RECOVERY and OAKTREE)	FINANCE, LLC'S MOTION TO
FINANCE LLC,)	DISMISS AND ANSWER
)	
Defendants.)	

**MOTION TO DISMISS UNDER RULE 12(b)(6) OF THE RULES OF CIVIL
PROCEDURE**

NOW COMES defendant Oak Tree Finance, LLC, by and through undersigned counsel, and moves that this adversary proceeding be dismissed as to Oak Tree Finance, LLC and shows as follows:

1. This matter was filed on June 21, 2022 by Debtor Mya Corbett ("debtor").
2. Debtor alleges that defendant Oak Tree Finance, LLC violated numerous provisions of the Bankruptcy Code.
3. In support of those allegations, debtor alleges that defendant Oak Tree Finance, LLC did as follows:
 - a. Debtor contacted Oak Tree Finance, LLC in July 2021 (eleven months before the filing of her bankruptcy petition) and sought payment relief and was denied.
 - b. When debtor contacted Oak Tree Finance, LLC for the return of her vehicle, she was instructed to talk to Oak Tree Finance, LLC's attorney.
 - c. That Oak Tree Finance, LLC's attorney indicated that all Oak Tree Finance, LLC would require for its release of its claims on the hold of the vehicle was "proof of insurance, tags, and drivers license."

4. None of these allegations against Oak Tree Finance, LLC are sufficient if true to state a claim upon which relief may be granted against Oak Tree Finance, LLC under the Bankruptcy Code or any other law.
5. Accordingly, defendant Oak Tree Finance, LLC moves that all claims against it be dismissed with prejudice under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted.

PRAYER FOR RELIEF

1. That the Court dismiss debtors adversary proceeding as to Oak Tree Finance, LLC under Rule of Civil Procedure 12(b)(6);
2. That reasonable attorneys fees be awarded to defendant Oak Tree Finance, LLC; and
3. For other such other relief that the Court deems necessary and proper.

**ANSWER OF DEFENDANT OAK TREE FINANCE LLC
TO PLAINTIFF/DEBTOR'S ADVERSARY PROCEEDING**

NOW COMES defendant Oak Tree Finance LLC, by and through undersigned counsel, in the above-referenced matter and answers the Plaintiff/Debtor's Adversary Proceeding as follows:

In that debtor's complaint was not numbered, it is reproduced in full here (sic throughout) with defendant Oak Tree Finance, LLC's answers following each allegation paragraph.

ALLEGATION: Debtor files this petition for adversary proceeding for recovery of 2011 Dodge Charger on Friday, June 17, 2022 and damages for creditor violating Chapter 13 automatic stay and expenses and damages for non use of the vehicle all this time and an accruing debt on the wheels on the car which belong to Rintyme, 3171 Hillsborough Road, Durham NC.

ANSWER: The allegations in this paragraph state a legal conclusion that does not require an answer. In the event that an answer is required, the allegations of this paragraph are denied.

ALLEGATION: Under §542 turnover of property, §548 fraudulent transfer and dischargeability FRBP 7001(6) fraud, false pretenses & false representations were committed by a representative of creditor of Oaktree Finance LLC.

ANSWER: The allegations in this paragraph state a legal conclusion that does not require an answer. Defendant Oak Tree Finance, LLC denies that any fraud, false pretenses, or false representations occurred. All other allegations are denied.

ALLEGATION: By Towriffic Towing & Recovery by the filing of a LT-260 form via the NC DMV on the same date Towriffic Towing & Recovery repossessed the car.

ANSWER: Defendant lacks sufficient information and personal knowledge to admit or deny the allegations of this paragraph.

ALLEGATION: The NC DMV rule for this LT-260 form under penalty is it is to be filed 10 days after holding the car and the car is abandoned by the owner. The car was never abandoned by the owner and on the date of the repossession, the owner/debtor went to the original repair shop, Black Tire, 904 Hwy 64, Apex, NC, to recover the car and was told that Black Tire had spoken to Towriffic and they would be in legal trouble if they gave the debtor owner their car back.

ANSWER: The allegations in this paragraph state a legal conclusion that does not require an answer. Defendant lacks sufficient information and personal knowledge to admit or deny the remaining allegations of this paragraph.

ALLEGATION: On July 27, 2021 debtor purchased a 2011 Dodge Charger and financed it through Oaktree Finance LLC for the amount \$16,212.00.

ANSWER: Admitted as to the allegation of the date, the purchase of the vehicle, and that it was financed through Oak Tree Finance, LLC. Denied as to the amount financed.

ALLEGATION: The debtor has paid over \$8,000.00 in repairs on the vehicle, including \$3,000, the first month which was a tire issue and had to be resolved in order to drive the vehicle safely for which the debtor has repair shop receipts.

ANSWER: Defendant lacks sufficient information and personal knowledge to admit or deny the allegations of this paragraph.

ALLEGATION: Debtor contacted Oaktree Finance in July 2021, for a deferred payment, etc to assist debtor as to not get behind on payments in the future but was denied any assistance or payment deferment.

ANSWER: Admitted.

ALLEGATION: On June 8, 2022 debtor filed Petition for Chapter 13 bankruptcy relief on 2011 Dodge Charger and statement of intention to keep the vehicle and make payments under chapter 13 plan.

ANSWER: Defendant Oak Tree Finance, LLC admits the debtor filed a Bankruptcy Petition but lacks sufficient information to admit or deny all other allegations of this paragraph.

ALLEGATION: Debtor came to the repair shop on June 8, 2022 to reclaim the vehicle and pay, but the repair shop, Black Tire stated they could not give the debtor her vehicle, because they had to give it to Towrrific Towing & Recovery.

ANSWER: Defendant lacks sufficient information and personal knowledge to admit or deny the allegations of this paragraph.

ALLEGATION: Debtor retrieved baby's car seat, belongings and license tag off the vehicle on June 8, 2022 at Black Tire, 904 Hwy 64, Apex, NC 27284, because Black Tire would not allow debtor to retrieve car.

ANSWER: Defendant lacks sufficient information and personal knowledge to admit or deny the allegations of this paragraph.

ALLEGATION: Towrific Towing & Recovery repossessed the vehicle on June 8, 2022 or June 9, 2022, the date is to be determined because the vehicle was in the repair shop, Blacks Tire, 904 Hwy 64, Apex, NC 27284, when Towrrific took possession of the 2011 Dodge Charger.

ANSWER: Defendant admits that Towrific Towing & Recovery towed the vehicle on June 8, 2022.

ALLEGATION: Under \$548, on June 8, 2022 or June 9, 2022 Towrific after having possession of the 2011 Dodge Charger one day or the same day possibly, filed a false LT-260 mechanics lien request to the NC DMV. When the debtor had come to the repair shop the same day to retrieve the vehicle and had been in touch with the repairs shop every other day.

ANSWER: Defendant lacks sufficient information and personal knowledge to admit or deny the allegations of this paragraph.

ALLEGATION: Debtor has also been doing business with multiple Black Tire Repair shops for almost a year and debtor contact information is on file and consistent. The LT-260 is a NC DMV form that is to be filed after the tow or repair shop has had possession of the vehicle for 10 days and it is unclaimed and the tow or repair shop cannot contact the owner.

ANSWER: The allegations in this paragraph state a legal conclusion that does not require an answer. Defendant lacks sufficient information and personal knowledge to admit or deny the remaining allegations of this paragraph.

ALLEGATION: Towrrific false statements include:

- 1- Towrrific filed LT-260 on the same day or day after repossessing vehicle
- 2- LT-260 states owner is unable to be found, this is untrue
- 3- LT-260 states tow company has to have the vehicle 10 days to file, this was false

ANSWER: Defendant lacks sufficient information and personal knowledge to admit or deny the allegations of this paragraph.

ALLEGATION: Debtor contacted creditor Oaktree Finance LLC for return of vehicle and return of vehicle rims and tires, which belong to Rimtyme of Durham, NC and are not paid for.

ANSWER: Admitted.

ALLEGATION: Debtor offered to replace tires with the original tires and rims that came on the vehicle when the vehicle was purchased through Oaktree Finance. Oaktree finance said talk to their lawyer.

ANSWER: Admitted.

ALLEGATION: Debtor contacted Steven Walker who stated debtor could obtain the vehicle with proof of insurance, tags and drivers license.

ANSWER: Admitted that Oaktree Finance LLC, through its attorney, would release its claims on the vehicle being held with proper proof of insurance. All other allegations of this paragraph are denied.

ALLEGATION: Towrrific stated the bankruptcy court had to call them personally and that Oaktree Finance LLC had to do a release, for which Oaktree Finance LLC emailed debtor, of course all correspondence goes through the lawyer.

ANSWER: Defendant lacks sufficient information and personal knowledge to admit or deny the allegations of this paragraph.

ALLEGATION: Towrrific Towing & Recovery refused return of the vehicle and requested fees of over \$1500.00, and \$50.00/day which as of today are estimated to be around \$2000.00.

ANSWER: Defendant lacks sufficient information and personal knowledge to admit or deny the allegations of this paragraph.

ALLEGATION: Towrrific states they want a statement from Oaktree Finance LLC to release the vehicle and Oaktree Finance LLC stated debtor contact the lawyer Steven Walker.

ANSWER: Defendant lacks sufficient information and personal knowledge to admit or deny the allegations of this paragraph.

ALLEGATION: So in essence, the debtor has been getting the runaround from Towrrific as to recovery of the 2011 Dodge Charger vehicle.

ANSWER: Defendant lacks sufficient information and personal knowledge to admit or deny the allegations of this paragraph.

ALLEGATION: Debtor requests return of the vehicle, 2011 Dodge Charger, and damages in the amount of \$50,000.00.

ANSWER: This paragraph contains a prayer for relief that is not required to be admitted or denied. In the event that an answer is required, defendant denies the allegations of this paragraph. Defendant specifically denies that debtor is entitled to any damages from Oak Tree Finance, LLC.

ALLEGATION: \$26,000 for fraudulent statement being filed against debtor to the NC DMV stating debtor abandoned her car to Towrrific for over 10 days and Towrrific could not get in touch with her, damages for the return of the wheels/rims on the car that belong to Rimtyme in the amount of approximately \$2500.00, \$8000.00 for the repairs already made on the car, and \$16,212.00 for the value of the car and damages for not being able to use the 2011 Dodge Charger for work,

doctors appointments, etc. and stress and work of having to file a case with the NC DMV on this false LT-260 claim, and this company Towrrific was obtained and hired by the creditor Oaktree Finance.

ANSWER: This paragraph contains a prayer for relief that is not required to be admitted or denied. In the event that an answer is required, defendant denies the allegations of this paragraph. Defendant specifically denies that debtor is entitled to any damages from Oak Tree Finance, LLC.

RESPECTFULLY SUBMITTED, This 20th day of July, 2022.



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CERTIFICATE OF SERVICE

This shall certify that a copy of the foregoing **DEFENDANT OAK TREE FINANCE, LLC'S MOTION TO DISMISS AND ANSWER** was this day served upon the plaintiff/debtor by mailing via US Mail, postage pre-paid, to each person below at the address of record, namely:

Mya Corbett, *Pro Se*
1183 University Drive, #105227
Burlington, NC 27215

William P. Miller
Bankruptcy Administrator
101 South Edgeworth Street
Greensboro, NC 27401

Tow-Riffic
5616 Quail Covey Lane
Wendell, NC 27591

This the 20th day of July, 2022.



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